

Message Text

CONFIDENTIAL

PAGE 01 CARACA 05889 01 OF 02 231620Z
ACTION L-03

INFO OCT-01 ARA-10 ISO-00 CA-01 /015 W
-----030096 231858Z /45

R 231352Z JUN 78
FM AMEMBASSY CARACAS
TO SECSTATE WASHDC 2794
INFO DEPT OF JUSTICE WASHDC

C O N F I D E N T I A L SECTION 1 OF 2 CARACAS 5889

E.O. 11652: GDS
TAGS: PDIP
SUBJECT: LESSONS LEARNED FROM THE BORDONI EXTRADITION CASE

REF: CARACAS 5183

SUMMARY: NOW THAT THE VENEZUELAN SUPREME COURT HAS DECIDED IN FAVOR OF THE US REQUEST FOR BORDONI'S EXTRADITION, THE EMBASSY BELIEVES IT USEFUL TO COMMENT ON THE HANDLING OF THIS CASE, ON HOW CLOSE THE USG CAME TO LOSING IT AND ON THE LESSONS THE EMBASSY LEARNED. BASED ON THIS EXPERIENCE, THE EMBASSY MAKES THREE SUGGESTIONS FOR EXTRATION CASES. FIRST, WHENEVER TRASLATIONS ARE PREPARED TO SUPPORT AN EXTRATION REQUEST, THAT ALL THE DOCUMENTS SUBMITTED BY US ATTORNEY OR JUSTICE DEPARTMENT BE TRANSLATED. THE DEPARTMENT SHOULD NOT RPT NOT DECIDE TO EXEMPT SOME DOCUMENTS FROM TRANSLATION WITHOUT CONSULTING WITH US ATTORNEY AND THE JUSTICE DEPARTMENT. SECOND, THE US ATTORNEY SHOULD MAKE CONTACT WITH THE EMBASSY HANDLING THE EXTRATION REQUEST AS SOON AS POSSIBLE AFTER THE REQUEST IS MADE TO THE FOREIGN GOVERNMENT. THIRD, LOCAL LAYWERS SHOULD BE HIRED TO ASSIST EMBASSY'S HANDLING EXTRATION REQUESTS WHENEVER THE LOCAL LEGAL SYSTEM DIFFERS GREATLY FROM THAT USED IN THE US. END SUMMARY.

1. BACKGROUND
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 CARACA 05889 01 OF 02 231620Z

THE BORDONI CASE TOOK 22 MONTHS FROM SUBMISSION OF THE EXTRADITION REQUEST (JULY 1976) TO THE VENEZUELAN SUPREME COURT'S DECISION. MOST OF THIS TIME WAS TAKEN UP WITH PROCEDURE, E.G., SLOW-MOVING VENEZUELAN BUREAUCRACY, MANY OTHER CASES BEFORE THE VENEZUELAN SUPREME COURT WHICH WORKS LESS THAN FOUR DAYS A WEEK AND RECESSES SEVERAL TIMES A YEAR.

SO FAR AS THE EMBASSY CAN DETERMINE, THE SUPREME COURT BEGAN TO STUDY THE INDICATMENT PRESENTED BY THE UNITED STATES GOVERNMENT IN SUPPORT OF ITS REQUEST FOR THE EXTRADITION OF BORDONI IN JANUARY OF 1977. THIS WAS AFTER THE FISCAL GENERAL (IRONICALLY THE FISCAL MINISTRY MENTIONED IN ARTICLE XIII OF THE US-VENEZUELAN EXTRADITION TREATY) HAD ISSUED HIS OPINION THAT THE USG REQUEST FOR BORDONI'S EXTRADITION SHOULD BE DENIED FOR A NUMBER OF REASONS, INCLUDING THE FACT THAT THE EVIDENCE SUPPORTING THE USG REQUEST WAS WEAK, MANY OF THE CHARGES AGAINST BORDONI IN THE US INDICTMENT, E.G., MAIL FRAUD, WERE NOT CRIMES UNDER VENEZUELAN LAW AND BECAUSE MANY OF THE TESTIMONY AGAINST BORDONI WAS MADE BY PERSONS CONVICTED OF CRIMES RELATED TO BORDONI'S (VENEZUELAN COURTS NEED NOT TAKE INTO ACCOUNT EVIDENCE OF CONVICTED PERSONS). FINALLY, THE FISCAL GENERAL HAD ALSO FOUND THAT THE ITALIAN REQUEST FOR BORDONI'S EXTRADITION HAD FAR BETTER EVIDENTIARY SUPPORT. THIS WAS NOT SURPRISING SINCE THE ITALIAN AND VENEZUELAN LEGAL SYSTEMS ARE BOTH NAPOLEONIC CODE SYSTEMS. THE ITALIAN REQUEST WAS PREPARED IN A FORM MORE FAMILIAR TO THE VENEZUELAN.

2. IN AUGUST 1977, THE VENEZUELAN SUPREME COURT ASKED THE USG TO PROVIDE THE EVIDENCE ON WHICH THE INDICTMENT WAS BASED AND GAVE THE EMBASSY SIXTY DAYS TO SUBMIT IT. THE US ATTORNEY'S OFFICE IN NEW YORK WORKED LITERALLY AROUND THE CLOCK TO PRODUCE SOME 1200 PAGES OF EVIDENCE WHICH WAS CONFIDENTIAL

CONFIDENTIAL

PAGE 03 CARACA 05889 01 OF 02 231620Z

FORWARDED TO CARACAS ON OCTOBER 5 AND WAS DELIVERED TO THE VENEZUELAN GOVERNMENT ON OCTOBER 22 (EVIDENCE TOOK 16 DAYS TO REACH CARACAS BY POUCH) WITH THE PROMISE THAT THE SPANISH LANGUAGE TRANSLATIONS WOULD FOLLOW SHORTLY AND WITHIN THE DEADLINE SET BY THE SUPREME COURT. THE TRANSLATIONS WERE PREPARED BY THE DEPARTMENT OF STATE ON A CRASH BASIS AND WERE HAND CARRIED TO CARACAS ON DECEMBER 4. THE EMBASSY DELIVERED THEM ON DECEMBER 5, WITHIN THE DEADLINE OF DECEMBER 8 (EMBASSY'S BEST ESTIMATE).

3. ASSISTANT US ATTORNEY KENNEY AND THE EMBASSY BOTH NOTED THAT THE DEPARTMENT HAD TRANSLATED ONLY A PORTION OF THE 1200 PAGES OF EVIDENCE. ESSENTIALLY WHAT WAS TRANSLATED WAS THE TESTIMONY OF WITNESSES BEFORE THE US GRAND JURY, AND IT WAS SOME OF THESE WITNESSES, ALREADY CONVICTED OF CRIMES RELATED TO THE BORDONI CASE, WHOSE TESTIMONY THE FISCAL GENERAL BELIEVED SHOULD BE DISCOUNTEED. THE STATE DEPARTMENT TRANSLATED NONE OF THE EXHIBITS SUBMITTED IN EVIDENCE. THESE EXHIBITS INCLUDED: DOCUMENTS RELATING TO THE FRANKLIN NATIONAL BANK'S TRANSACTIONS PROVING BORDONI'S FRAUD; TELEXES SHOWING BORDONI'S FRAUDULENT ACTIVITIES, AS WELL AS QUOTATIONS ON FOREIGN EXCHANGE

TRANSACTIONS SUPPORTING THE CHARGE THAT BORDONI HAD ENGAGED IN FICTITIOUS FOREIGN EXCHANGE TRANSACTIONS. FINALLY, THE EXHIBITS ALSO INCLUDED THE TESTIMONY OF ITALIAN WITNESSES INVOLVED IN THE FRAUD WHO HAD NOT BEEN CONVICTED (THEIR TESTIMONY WAS THEREFORE USEFUL TO THE VENEZUELAN SUPREME COURT) AND WHOSE TESTIMONY WAS EXTREMELY DAMAGING TO BORDONI. IN VIEW OF THE TIME LIMIT, THE EMBASSY SUBMITTED THE TRANSLATIONS PROVIDED BY THE STATE DEPARTMENT AND SOON BEGAN TO RECEIVE INDICATIONS THAT THE SUPREME COURT WAS AWARE IT HAD NOT RECEIVED ALL THE EVIDENCE ON WHICH THE INDICTMENT AGAINST BORDONI WAS BASED. IN PARTICULAR THE COURT COMPLAINED THAT NONE OF THE DOCUMENTS CONCERNING THE FINANCIAL TRANSACTIONS IN QUESTION HAD BEEN PROVIDED. THIS DISSATISFACTION GREW TO SUCH AN EXTENT
CONFIDENTIAL

CONFIDENTIAL

PAGE 04 CARACA 05889 01 OF 02 231620Z

THAT IN EARLY FEBRUARY 1978, DR. MENDOZA, THE VENEZUELAN LAWYER HIRED BY ASSISTANT US ATTORNEY KENNEY DURING A VISIT TO CARACAS IN NOVEMBER 1977, TELEPHONED THE EMBASSY TO STATE THAT DR. LOZADA, THE SUPREME COURT JUSTICE HANDLING THE BORDONI CASE, HAD TOLD MENDOZA THAT UNLESS THE EMBASSY PROVIDED THE "FISCAL DATA" (DOCUMENTATION ON THE FINANCIAL TRANSACTIONS) QUICKLY, THE COURT WOULD HAVE TO DECIDE AGAINST THE US REQUEST.

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 CARACA 05889 02 OF 02 231839Z
ACTION L-03

INFO OCT-01 ARA-10 ISO-00 CA-01 /015 W
-----030961 231857Z /45

R 231352Z JUN 78
FM AMEMBASSY CARACAS
TO SECSTATE WASHDC 2795
INFO DEPT OF JUSTICE WASHDC

C O N F I D E N T I A L SECTION 2 OF 2 CARACAS 5889

4. THE EMBASSY TELEPHONED ASSISTANT US ATTORNEY KENNEY WHO TRAVELLED IMMEDIATELY TO CARACAS. THROUGH DR. MENDOZA, MR. KENNEY WAS ABLE TO INTERVIEW DR. LOZADA. MR. KENNEY

GAVE LOZADA A VERBAL SUMMARY OF THE EVIDENCE AGAINST BORDONI, AND IT BECAME QUITE CLEAR THAT LOZADA WAS IMPRESSED BUT WAS TOTALLY UNFAMILIAR WITH IT BECAUSE ALMOST ALL OF IT WAS TESTIMONY AND EVIDENCE WHICH HAD NOT BEEN TRANSLATED BY THE STATE DEPARTMENT. LOZADA EXPLAINED TO KENNEY SOME OF THE DEFICIENCIES IN THE US REQUEST (WHICH HAD ALSO BEEN IDENTIFIED BY THE FISCAL GENERAL AND SAID THAT IF THE US EXTRADITION REQUEST WERE LEFT AS IT WAS, THE COURT WOULD HAVE NO ALTERNATIVE BUT TO REFUSE IT. LOZADA THEN REQUESTED THAT THE USG SUBMIT A BRIEF SUMMARIZING THE EVIDENCE AGAINST BORDONI MENTIONED BY KENNEY.

5. MR. KENNEY REMAINED IN CARACAS FOR A FULL WEEK WORKING AROUND THE CLOCK ON THE BRIEF AND DISCUSSED IT TWICE WITH DR. MENDOZA WHO OFFERED ADVICE AND SUGGESTED CHANGES SO THAT THE BRIEF WOULD CONFORM AS CLOSELY AS POSSIBLE TO LEGAL USAGE IN VENEZUELA. THIS BRIEF WAS THEN TRANSLATED ON A CRASH BASIS BY THE EMBASSY AND SUBMITTED TO THE SUPREME COURT THROUGH THE GOV ON MARCH 13. ON MARCH 28 THE EMBASSY SUBMITTED ITS OWN TRANSLATIONS OF THE MANY DOCUMENTS SUPPORTING THE BRIEF. ON MAY 19, DR. MENDOZA HEARD FROM FROM DR. LOZADA THAT THE BRIEF HAD TURNED THE TIDE AND THAT IT APPEARED THAT THE COURT'S DECISION WOULD BE FAVORABLE
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 CARACA 05889 02 OF 02 231839Z

TO THE USG. ON JUNE 1 THE COURT ISSUED ITS FAVORABLE DECISION.

6. CONCLUSIONS:

THE EMBASSY LEARNED THREE LESSONS FROM THIS EXPERIENCE. THE FIRST IS THAT ALL THE EVIDENCE SUBMITTED BY THE ASSISTANT US ATTORNEY SHOULD HAVE BEEN TRANSLATED BY THE DEPARTMENT OF STATE. IT IS THE EMBASSY'S UNDERSTANDING THAT MR. KENNEY WAS NOT CONTACTED BY THE DEPARTMENT WHEN THE DECISION WAS MADE NOT TO TRANSLATE ALL THE EVIDENCE. SECOND, IT IS ESSENTIAL THAT THE EMBASSY HANDLING AN EXTRADITION REQUEST HAVE EARLY ACCESS TO THE US ATTORNEY IN CHARGE OF THE CASE. IF IT IS THE EMBASSY'S UNDERSTANDING THAT THE PROCEDURES FOR HANDLING EXTRADITION CASES REQUIRE THE US ATTORNEY TO DEAL WITH A SPECIAL UNIT IN THE JUSTICE DEPARTMENT CHARGED WITH REVIEWING THE INDICTMENT TO MAKE SURE THAT THE CRIMES INVOLVED ARE COVERED BY THE EXTRADITION TREATY WITH THE COUNTRY OF WHICH THE REQUEST IS MADE. THE REQUEST IS THEN PASSED ON TO A UNIT IN THE DEPARTMENT'S OFFICE OF THE LEGAL ADVISOR FOR TRANSMISSION TO THE EMBASSY INVOLVED. BUREAUCRATICALLY THIS PROBABLY MAKES SENSE BUT WHAT IT DOES IS FILTER OUT MUCH IMPORTANT INFORMATION WHICH THE EMBASSY OUGHT TO KNOW IN ORDER TO HANDLE THE EXTRADITION REQUEST EFFECTIVELY.

THIS PROVED TO BE THE CASE IN THIS SITUATION. IT WAS NOT
UNTIL MR. KENNEY TRAVELLED TO CARACAS FOR THE FIRST TIME
IN NOVEMBER 1977 THAT THE EMBASSY LEARNED A NUMBER OF
IMPORTANT DETAILS ABOUT THE CASE INCLUDING THE FACT THAT
THERE WERE CERTAIN TIME LIMITS ON BRINGING MR. BORDONI
TO TRIAL WHICH REQUIRED AS RAPID A RESPONSE FROM THE
VENEZUELAN COURTS AS POSSIBLE. FINALLY, THE EMBASSY BELIEVES
IT CRUCIAL TO HIRE A LOCAL LAWYER, AT LEAST IN THOSE
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 CARACA 05889 02 OF 02 231839Z

COUNTRIES WHOSE LEGAL SYSTEM DIFFERS FROM THAT USED IN THE US.
THIS ENSURES THAT THE EMBASSY IS FULLY AND ADEQUATELY
INFORMED OF THE LEGAL PROCESSES BUT, MORE IMPORTANTLY, IT ALLOWS
FOR EXPERT REVIEW OF THE EXTRADITION REQUEST TO MAKE SURE THAT IT
HAS BEEN PREPARED IN A FORM WHICH THE LOCAL JUDICIAL AUTHROTIES
CAN UNDERSTAND AND RELATE TO. DR. MENDOZA WAS INVALUABLE.
FIRST, HE WAS ABLE, THROUGH HIS PROMINENCE AND CONTACTS, TO
PUT MR. KENNEY IN TOUCH WITH DR. LOZADA, WHO, IN EFFECT,
GAVE THE USG A SECOND CHANCE. THE EMBASSY PROBABLY WOULD
NOT HAVE BEEN ABLE TO ARRANGE THIS. SECOND, THE GOV
WAS NOT ABLE TO HELP THE EMBASSY A GREAT DEAL CONCERNING
VENEZUELAN PROCEDURES OR ADVICE ON WHAT TO DO NEXT.
ARTICLE XIII OF THE EXTRADITION TREATY SAYS THAT THE
VENEZUELAN FISCAL MINISTRY OR LEGAL OFFICERS ARE TO HELP
THE USG WITH ITS EXTRADITION REQUESTS. IN FACT, THIS
PROVISION OF THE TREATY DOES NOT WORK. THE JUSTICE MINISTER
WAS VERY HELPFUL, BUT THERE WAS LIMITS TO THE AMOUNT OF TIME
AND ATTENTION HE COULD DEVOTE TO THE CASE. THE FISCAL
MINISTRY, IRONICALLY, NOT ONLY DID NOT HELP BUT, ACCORDING
TO DR. LOZADA, MADE IT MUCH MORE DIFFICULT, WITH THE FISCAL
GENERAL'S OPINION, FOR THE SUPREME COURT TO FIND IN FAVOR
OF THE USG'S REQUEST.
VAKY

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION
Control Number: n/a
Copy: SINGLE
Draft Date: 23 jun 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978CARACA05889
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780262-0935
Format: TEL
From: CARACAS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780627/aaaaaxcn.tel
Line Count: 261
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 638ea182-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 CARACAS 5183
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 15 jul 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2232089
Secure: OPEN
Status: NATIVE
Subject: LESSONS LEARNED FROM THE BORDONI EXTRADITION CASE
TAGS: PDIP, PGOV, VE, (BORDONI, CARLO)
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/638ea182-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014